

PEARSON, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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| CHARLIE HARRIS, <i>et al.</i> , |) | |
| |) | CASE NO. 5:11CV0816 |
| Plaintiffs, |) | |
| |) | |
| v. |) | JUDGE BENITA Y. PEARSON |
| |) | |
| CITY OF AKRON, <i>et al.</i> , |) | <u>MEMORANDUM OF OPINION AND</u> |
| |) | <u>ORDER OF PARTIAL DISMISSAL</u> |
| Defendants. |) | [Resolving ECF Nos. 19 , 26 , and 29] |

I.

Defendants City of Akron, Mayor Donald L. Plusquellic, Cheri B. Cunningham, Akron Department of Public Health, Richard Merolla, Duane Groeger, John Eberhardt, Jr., and Jodie Forester (“City Defendants”) filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction and for Failure to State a Claim ([ECF No. 19](#)). City Defendants subsequently filed a Motion to Dismiss for Failure to Prosecute ([ECF No. 26](#)). Despite having been given an extension of time within which to file a memorandum in opposition to the Motion to Dismiss for Failure to Prosecute, Plaintiffs have not opposed the motion.

On March 1, 2011, Defendant City of Akron (“the City”) filed a lawsuit against Plaintiff Charlie Harris in the Akron Municipal Court to recoup the cost of removing litter and trash debris from Mr. Harris’ property on 399 Wildwood Ave. in the City of Akron, Ohio. [ECF No. 19-2](#). On March 8, 2011, Mr. Harris filed an Answer, denying in part the allegations in the City’s Complaint. [ECF No. 19-3](#). On April 26, 2011, while the municipal court case was still ongoing,

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Mr. Harris, along with his wife, Plaintiff Jacqueline Harris, filed the case at bar alleging that the City's \$468.01 litter clean up fee was a racially-motivated conspiracy involving all Defendants.

[ECF No. 1](#). On July 20, 2011, Plaintiffs filed an Amended Complaint. [ECF No. 16](#).

On May 27, 2011, the municipal court awarded the City summary judgment and ordered Harris to pay the \$468.01 clean up fee, plus court costs and interest. [ECF No. 19-6](#). Mr. Harris appealed that judgment to the Ohio Ninth District Court of Appeals. [ECF No. 19-7](#). In April 2012, the Ninth District Court of Appeals affirmed the municipal court's judgment against Mr. Harris and ordered a special mandate directing the municipal court to carry its judgment into execution. [Akron v. Harris, No. 25993, 2012 WL 1377988 \(Ohio App. 9th Dist. April 18, 2012\)](#).

On May 10, 2012 the municipal court issued an Order releasing attempted garnished wages to the City. [ECF No. 28-2](#).

Because Mr. Harris' state court action is concluded, City Defendants withdrew their previous arguments for dismissal based on abstention and ripeness. [ECF No. 28 at 3-4](#). In applying the four elements set forth in [Hapgood v. City of Warren, 127 F.3d 490, 493 \(6th Cir. 1997\)](#), the Court holds that Plaintiffs' claims against City Defendants are barred by res judicata due to the final state court judgment. Plaintiffs' claims against City Defendants are also dismissed for failure to prosecute.

II.

Plaintiffs were previously advised that if they could not show good cause prior to August 24, 2011 why service of the summons and Amended Complaint ([ECF No. 16](#)) was not made upon Defendants The Bank of New York Trust Company, NA as Successor Trustee to JP

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Morgan Chase Bank, NA as Trustee and Deutsche Bank National Trust Company, as Trustee of Ameriquest Mortgage Securities, Inc, Asset-Backed Pass through Certified, Quest Trust Series, the action would be dismissed as to those defendants. *See* Order ([ECF No. 22](#)).

On August 17, 2011, Plaintiffs filed a Response to the Order ([ECF No. 23](#)).¹ The response, however, does not show good cause for Plaintiffs' failure to serve these two defendants. Moreover, the file continues to show no service of the summons and Amended Complaint ([ECF No. 16](#)) upon said defendants.

III.

Accordingly, the Court grants City Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction and for Failure to State a Claim ([ECF No. 19](#)) and Motion to Dismiss for Failure to Prosecute ([ECF No. 26](#)). Plaintiffs' claims against Defendants City of Akron, Mayor Donald L. Plusquellic, Cheri B. Cunningham, Akron Department of Public Health, Richard Merolla, Duane Groeger, John Eberhardt, Jr., and Jodie Forester are dismissed.

The Court also dismisses without prejudice all Plaintiffs' claims against Defendants The Bank of New York Trust Company, NA as Successor Trustee to JP Morgan Chase Bank, NA as Trustee and Deutsche Bank National Trust Company, as Trustee of Ameriquest Mortgage Securities, Inc, Asset-Backed Pass through Certified, Quest Trust Series pursuant to [Fed. R. Civ. P. 4\(m\)](#).

¹ The document was only signed by Mr. Harris.

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City Defendants' Motion for Status Conference ([ECF No. 29](#)) is denied as moot.

IT IS SO ORDERED.

September 10, 2012
Date

/s/ Benita Y. Pearson
Benita Y. Pearson
United States District Judge